IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

WEDNESDAY, THE 6TH JUNE 2007 / 16TH JYAISHTA 1929

WP(C).No. 7827 of 2007(F)

PETITIONER:

N.RADHAKRISHNAN, M/S.ANI PLASTICS,
ULIYACOVIL SOUTH, QUILON.

BY ADVS. SRI.N.DHARMADAN (SR.)
SMT.D.P.RENU

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT, LOCAL BODIES,SECRETARIAT, TRIVANDRUM.

2. CORPORATION OF KOLLAM, REPRESENTED BY ITS SECRETARY, OFFICE OF THE KOLLAM CORPORATION, KOLLAM.

3. SECRETARY, KOLLAM CORPORATION, OFFICE OF THE KOLLAM CORPORATION, KOLLAM.

ADDITIONAL RESPONDENTS:

4. SRI.K.KAMALAKSHAN, 117/NAVAJYOTHI NAGAR, KADAPPAKKADA P.O., KOLLAM - 8.

ADDITIONAL R4 IS IMPLEADED AS PER ORDER DTD. 13.3.07 IN I.A.NO.3869/07.

5. THE SENIOR ENVIRONMENTAL ENGINEER,
POLLUTION CONTROL BOARD,
KOLLAM.

ADDITIONAL R5 IMPLEADED AS PER ORDER DATED 16.3.2007 IN WP(C).

R1 BY SENIOR GOVERNMENT PLEADER
SRI.K.J.MOHAMMED ANZAR
R2 & R3 BY ADV.SRI.M.K.CHANDRAMOHANDAS
R4 BY ADV. SRI.A.AHZAR
R5 BY ADV.SMT.K.K.THULSIBAI

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.M.JOSEPH, J.

W.P.(C) No.7827 2007 F

Dated this the 6th day of June, 2007.

JUDGMENT

The case of the writ petitioner is as follows: The petitioner is the proprietor of a plastic recycling plant, which is being run as a small scale unit under the Industries Department. The petitioner was running the unit on the strength of the licence issued by the Corporation. He applied for renewal of the licence and the former Secretary of the Corporation, after due enquiry, decided to renew the licence. But, the new Secretary is withholding the renewal of the licence. The prayer in this writ petition is for a direction to the Corporation to renew the licence already issued to the petitioner for running the plastic recycling unit.

2. According to the petitioner, he has been running the unit for the past 15 years with the licence issued by respondents 2 and 3. There is no default or arrears of licence fee. The petitioner has submitted Ext.P2 application for renewal for the year 2006-07. The Health Officer inspected the site and submitted a positive report. Ext.P4(2) is the copy of the report. As per the direction of the Pollution Control Board, all modifications and safeguards were effected and consent was granted by Ext.P5. It is

the further case of the petitioner that the Corporation considered the application in the light of the report of the Pollution Control Board and granted the licence. It is stated that Ext.P6 was issued after verification based on a complaint received from the additional 4th respondent, who is one of the members of the alleged Residential Association. Ext.P7 is relied on by the petitioner to substantiate that there is no nuisance or difficulties to the local people.

3. The additional 4th respondent has filed a counter affidavit pointing out that he is one of the members of the Residential Association by producing Exts.R4(a) and R4(b). It is stated in the counter affidavit that due to the burning of plastic in high temperature, poisonous chemicals are discharged into the air and the residential association had made several complaints as evidenced by Exts.R4(c) to R4(e). Ext.R4(f) is a copy of the certificate, to show that the additional 4th respondent's wife is a victim of the unit run by the petitioner. It is further stated that Ext.P5 was issued without proper enquiry and investigation and no enquiry was conducted with regard to air pollution.

4. A reply affidavit is filed by the petitioner, wherein it is, inter alia, stated that the additional 4th respondent started residence only in 1990 and the unit was started in the year 1988.

It is also inter alia stated by the petitioner that he has installed 'vapor extraction system' with exhaust fan as directed by the Pollution Control Board and hence there is no health problem.

5. I heard learned counsel for the petitioner, learned counsel for the Kollam Corporation and also learned counsel for the additional 4th respondent.

6. Counsel for the Corporation would submit that there were complaints from the public. It was decided that only on production of proper clearance from the Pollution Control Board that the petitioner would be permitted to operate the unit. It is further submitted that there were arrears to be paid by the petitioner. As far as clearance from the Pollution Control Board is concerned, Ext.P5 dated 18.7.2006 would show that consent is given by the Pollution Control Board to operate the unit. No doubt, it contains various conditions. Item No.2 in the reference would appear to show that enquiry was conducted on 27.6.2006 and 27.7.2006.

7. In the interim order passed on 16.3.2007, this court had directed respondents 2 and 3 to issue licence applied for upon his paying whatever amounts are due by way of licence fee on account of conduct of the business during the previous years. It is not in dispute that the licence, as directed by this

court, was issued to the petitioner. In such circumstances, I think, prima facie, that there may not be any merit in the objection of the Corporation that there is arrears. No doubt, if there is any amount remaining to be paid by way of licence fee, it is open to the Corporation to demand it from the petitioner, so as to enable the petitioner to comply with the demand.

8. As far as the contention that the petitioner should obtain clearance from the Pollution Control Board is concerned, I find that Ext.P5 was issued after due enquiry and inspection. In such circumstances, as far as the local body is concerned, the two objections cannot hold good. It is to be noted that the licence has already been issued, no doubt, provisionally. In view of the fact that the objections raised by the respondent/Corporation are found to be without merit and that as already a license is issued, I direct that the licence, which has been granted on a provisional basis, will be treated as having been granted on a regular basis.

9. However, I make it clear that the very basis of this decision is Ext.P5. This judgment will be without prejudice to the right of the additional 4th respondent to challenge Ext.P5 before the appropriate forum in accordance with law. I also make it clear that I have not gone into the question whether the additional 4th respondent is a member of the residential

association or whether there is such an association at all. I further make it clear that if the petitioner violates any of the conditions stipulated in Ext.P5, it is open to the additional 4th respondent to bring it to the notice of the appropriate authority, so that appropriate action can be taken against him.

Writ petition is disposed of as above.

Sd/-

(K.M.JOSEPH)

JUDGE

sk/

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P.S. To Judge